

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM BRANDON CUMMINGS,)	
)	
Plaintiff,)	Civil Action No. 08-707
)	
v.)	Judge Joy Flowers Conti
)	Magistrate Judge Caiazza
LT. CRUMB, et al.,)	In re: Doc. 8
)	
Defendants.)	

ORDER

William Cummings ("plaintiff") has been granted permission to proceed *in forma pauperis* in this prisoner civil rights proceeding. The magistrate judge entered an order directing that plaintiff either authorize the withdrawal of \$16.00 as an initial payment on the \$350.00 filing fee, or indicate his desire to withdraw this action. (Doc. 6.) Plaintiff filed an appeal from the magistrate judge's order, asking that he be permitted to make an initial payment of \$5.00 because he has ongoing state court criminal proceedings which require him to expend monies for photocopies.

The relevant statute, 28 U.S.C. §1915(b)(1), requires that a court collect from a prisoner who seeks permission to proceed *in forma pauperis* an initial payment equivalent to twenty percent of the average monthly deposits into the prisoner's account, or his average monthly balance for the prior six-month period, whichever is greater. In this respect, the statutory language is mandatory, stating that the court "shall assess" an initial

installment calculated in the manner set forth. The magistrate judge's calculation complied with the applicable statute, and there is no basis for reversing his order; nor is there any basis for altering or ignoring the required calculation of the amount of the initial installment payment.

Likewise, the continuing obligation to pay monthly installments equivalent to twenty percent of the prior month's deposits into the prisoner's account is mandatory. 28 U.S.C. §1915(b)(2) ("the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account."). There is no basis for reversing or modifying the magistrate judge's order in this case.

Of course, plaintiff retains the right to choose whether or not to proceed with his lawsuit. He may either authorize withdrawal of the funds as required by §1915(b)(1), or he can withdraw his complaint at which point no filing fee will be due.

IT IS HEREBY ORDERED that the appeal from the magistrate judge's order (Doc. 8) is DENIED.

s/Joy Flowers Conti
JOY FLOWERS CONTI
UNITED STATES DISTRICT JUDGE

June 18, 2008

cc:
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